

1 MARK JOSEPH KENNEY (State Bar No. 87345)  
2 mjk@severson.com  
3 JAN T. CHILTON (State Bar No. 47582)  
jtc@severson.com  
4 JOSHUA E. WHITEHAIR (State Bar No. 244900)  
jew@severson.com  
5 SEVERSON & WERSON  
A Professional Corporation  
6 One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
Telephone: (415) 398-3344  
Facsimile: (415) 956-0439

7 Attorneys for Defendant  
8 Bank of America, N.A.

ORIGINAL  
FILED  
MAR - 3 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11  
12 DAVID KECK, an individual,

13 Plaintiff,

14 vs.

15 BANK OF AMERICA, a Delaware  
Corporation; CENTRAL STATES  
16 INDEMNITY CO. OF OMAHA, a Nebraska  
Corporation; CSI PROCESSING, LLC, a  
17 Nebraska Company, and DOES 1 through 100,

18 Defendant.

Case No.: CV-08-1218 CRB

**CERTIFICATE OF SERVICE OF  
(A) NOTICE TO ADVERSE PARTY OF  
NOTICE OF REMOVAL TO FEDERAL  
COURT AND (B) OTHER  
DOCUMENTS**

19 I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I  
20 am employed in the City of San Francisco, California; my business address is Severson &  
21 Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.  
22

23 On the date below I served a copy, with all exhibits, of the following document:

24 (1) Notice to Adverse Party of Removal to Federal Court file-stamped February 29,  
25 2008, by San Francisco Superior Court, a copy of which is attached to this Certificate.

26 Additionally, on the date below I served a copy, with all exhibits, of the following  
27 documents:

28 (2) Civil Case Cover Sheet,

- 1       (3) Certification as to Interested Parties,  
2       (4) Demand for Jury Trial,  
3       (5) Notice of Removal file-stamped February 29, 2008,  
4       (6) ECF Registration Information Handout [2 pages],  
5       (7) Order Setting Initial Case Management Conference and ADR Deadlines [7 pages],  
6       (8) Notice of Availability of Magistrate Judge to Exercise Jurisdiction [3 pages],  
7       (9) Welcome to the U.S. District Court [3 pages], and  
8       (10) Drop Box Filing Procedures [1 page],

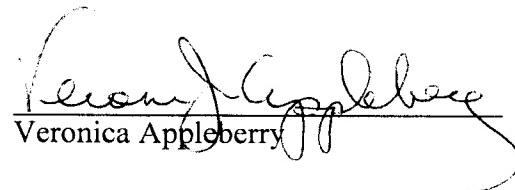
9 on all known interested parties in said case addressed as follows:

10       Alan R. Brayton, Esq.  
11       Peter B. Fredman, Esq.  
12       Charlotte E. Schott, Esq.  
13       Brayton Purcell, LLP  
14       222 Rush Landing Road  
15       Novato, CA 94948-6169

16                   *Attorneys for Plaintiff*

17       By placing the envelope for collection and mailing following our ordinary business  
18       practices. I am readily familiar with the firm's practice of collecting and processing  
19       correspondence for mailing. On the same day that correspondence is placed for collection and  
20       mailing, it is deposited in the ordinary course of business with the United States Postal Service in  
21       San Francisco, California, in sealed envelopes with postage fully prepaid.

22       I declare under penalty of perjury under the laws of the United States of America that the  
23       foregoing is true and correct. I declare that I am employed in the office of a member of the Bar of  
24       this Court at whose direction the service was made. This declaration is executed in San  
25       Francisco, California, on February 29, 2008.

26                     
27                   Veronica Appleberry

1 MARK JOSEPH KENNEY (State Bar No. 87345)  
2 [mjk@severson.com](mailto:mjk@severson.com)  
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10 San Francisco, CA 94111  
11 Telephone: (415) 398-3344  
12 Facsimile: (415) 956-0439

13 Attorneys for Defendant  
14 Bank of America, N.A.



FEB 29 2008

GORDON PARK, Clerk  
BY: WESLEY RAMIREZ  
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DAVID KECK, an individual,

Case No.: CGC-08-471296

Plaintiff,

**NOTICE TO ADVERSE PARTY OF  
REMOVAL TO FEDERAL COURT**

vs.

BANK OF AMERICA, a Delaware  
Corporation; CENTRAL STATES  
INDEMNITY CO. OF OMAHA, a Nebraska  
Corporation; CSI PROCESSING, LLC, a  
Nebraska Company, and DOES 1 through 100,

Defendant.

TO THE ABOVE-ENTITLED COURT AND TO DAVID KECK AND HIS  
ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT a Notice of Removal of this action was filed in the  
United States District Court of the Northern District of California on February 29, 2008. A copy  
of the Notice of Removal is attached to this Notice and is served and filed herewith.

///

///

///

///

1 DATED: February 29, 2008

SEVERSON & WERSON  
A Professional Corporation

2  
3 By:   
4 Jan T. Chilton

5 Attorneys for Defendant  
6 Bank of America, N.A.  
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1 MARK JOSEPH KENNEY (State Bar No. 87345)  
2 [mjk@severson.com](mailto:mjk@severson.com)  
3 JAN T. CHILTON (State Bar No. 47582)  
4 [jtc@severson.com](mailto:jtc@severson.com)  
5 JOSHUA E. WHITEHAIR (State Bar No. 244900)  
6 [jew@severson.com](mailto:jew@severson.com)  
7 SEVERSON & WERSON  
A Professional Corporation  
One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
Telephone: (415) 398-3344  
Facsimile: (415) 956-0439

8 Attorneys for Defendant  
Bank of America, N.A.

9  
10 UNITED STATES DISTRICT COURT  
11  
12 NORTHERN DISTRICT OF CALIFORNIA

13 CV Case No.: **08 1219 CRB**  
14 DAVID KECK, an individual,

15 Plaintiff,

16 vs.

17 BANK OF AMERICA, a Delaware  
Corporation; CENTRAL STATES  
INDEMNITY CO. OF OMAHA, a Nebraska  
Corporation; CSI PROCESSING, LLC, a  
Nebraska Company, and DOES 1 through 100,

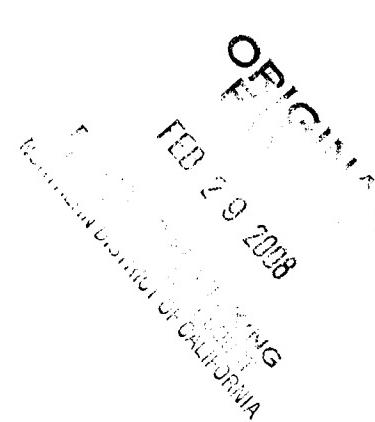
18 Defendants.

19  
20 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

21 PLEASE TAKE NOTICE that, under the Class Action Fairness Act (28 U.S.C.  
22 §§1332(d), 1453(b)), defendant Bank of America, N.A. ("BofA"), sued as "Bank of America,"  
23 hereby removes to this Court the state court action described below:

24 **The Removed Action**

25 1. On January 23, 2008, plaintiff David Keck commenced this action, entitled, David  
26 Keck, an individual, plaintiff v. Bank of America, a Delaware Corporation; Central States  
27 Indemnity Co. of Omaha, a Nebraska Corporation; CSI Processing, LLC, a Nebraska Company,  
28 and DOES 1 through 100, defendants, No. CGC-08-471296 in the Superior Court of the State of



1 California for the City and County of San Francisco. Keck filed a first amended complaint in the  
2 action on January 31, 2008.

3       2. BofA first received a copy of the complaint in this action on February 4, 2008  
4 when BofA's agent for service of process was served with a copy of the first amended complaint  
5 and summons in the action.

6       3. As required by 28 U.S.C. § 1446(a), BofA has attached as Exhibit A true and  
7 correct copies of the complaint, the first amended complaint, the summonses on the original and  
8 first amended complaints, the Notice to Plaintiff, the Civil Case Cover Sheet, and Keck's  
9 declaration pursuant to Civil Code section 1780(c), which constitute all process, pleadings and  
10 orders served on BofA in the action.

11           **Basis For Removal**

12       4. This action is a civil class action of which this Court has original jurisdiction under  
13 28 U.S.C. §1332(d) and is one which may be removed to this Court by BofA pursuant to  
14 28 U.S.C. §§1441(a) and 1453(b).

15       5. The action is a class action within the meaning of 28 U.S.C. §1332(d)(1)(B).  
16 Paragraph 25 of the first amended complaint alleges that Keck "brings this action on behalf of the  
17 Class of all California resident BOA [Bank of America] customers who were charged and paid  
18 for debt protection product/service based on telephone solicitations by defendants, including, but  
19 not limited to, the sub-class of such persons who were senior citizens at the time of the alleged  
20 transaction." Paragraph 24 of the first amended complaint alleges that Keck seeks to represent  
21 this class under California Code of Civil Procedure sections 382 and 384 and Civil Code section  
22 1781 which are similar to Federal Rule of Civil Procedure 23 and allow one or more  
23 representative persons sue on behalf of others as a class action.

24       6. A member of the class is a citizen of a state different from that of defendant.

25           a. BofA is informed and believes that Keck was, and still is, a citizen of the  
26 State of California. Paragraph 1 of the first amended complaint alleges that Keck "is and  
27 was at all relevant times a resident of the City and County of San Francisco."

1           b.       BofA is informed and believes that one or more other members of the  
2       alleged plaintiff class are citizens of the State of California. Paragraph 25 of the first  
3       amended complaint defines the class as including California-resident BofA customers.

4           c.       BofA is a national banking association and a citizen of the State of North  
5       Carolina only as that is the location of its main office as specified in BofA's charter.

6           28 U.S.C. §1348; *Wachovia Bank v. Schmidt*, 546 U.S. 303 (2006).

7       7.       The matter in controversy in this action exceeds the sum or value of \$5 million,  
8       exclusive of interest and costs, when the claims of all class members are aggregated as provided  
9       in 28 U.S.C. §1332(d)(6).

10          a.       The complaint does not allege an aggregate amount in controversy or pray  
11       for the award of any stated total sum on behalf of the class. The complaint does not allege  
12       that the aggregate amount in controversy is less than \$5 million.

13          b.       Paragraph 41 of the first amended complaint alleges that Keck seeks an  
14       award of \$5,000 in statutory damages for each similarly situated class member under  
15       California Penal Code section 637.2. Paragraph E of the first amended complaint's prayer  
16       also seeks \$1,000 in additional statutory damages for each class member under California  
17       Civil Code section 1780(a)(1). Paragraph 26 of the first amended complaint alleges that  
18       Keck believes there are "tens of thousands" of members of the alleged class that he seeks  
19       to represent. Considering only the statutory damages sought, the amount in controversy  
20       will exceed \$5 million if there are only 834 class members.

21          c.       According to BofA's business records, there are more than 834 members of  
22       the class alleged in Keck's first amended complaint. The business records show that  
23       during period from July 2006 through February 2008 more than 3,000 BofA customers in  
24       California were offered the debt protection service referenced in Keck's first amended  
25       complaint by a telemarketing solicitation and agreed to purchase the service, thereby  
26       incurring a charge for that service each month their accounts have a positive balance.

27          d.       In addition to statutory damages, Keck seeks restitution of all money BofA  
28       obtained for the debt protection service during the past four years, actual damages and

1       punitive damages, as well as attorney fees pursuant to statute. (1st Amended Compl.,  
2       prayer, ¶¶B, D, F.)

3       8. This notice of removal is timely under 28 U.S.C. §1446(b) because BofA has filed  
4       it within 30 days of service of the summons and complaint on BofA.

5       9. As required by 28 U.S.C. §1446(d), BofA will provide written notice of the  
6       removal of this action to Keck, and to the San Francisco Superior Court.

7       WHEREFORE, BofA prays that this action be removed to this Court for final  
8       determination.

9       DATED: February 29, 2008

SEVERSON & WERSON  
A Professional Corporation

10      By: Jan T. Chilton  
11      Jan T. Chilton

12      Attorneys for Defendant  
13      Bank of America, N.A.

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**SUMMONS**  
**(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

BANK OF AMERICA, a Delaware corporation;; CSI PROCESSING LLC, a Nebraska company;; and and DOES 1 through 100,

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DAVID KECK, an individual,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

400 McAllister Street, San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Peter Fredman (Bar # 189097)

Brayton Purcell LLP

222 Rush Landing Road, Novato, CA 94948

DATE:

(Fecha) JAN 23 2008

Gordon Park-Li

CASE NUMBER:  
(Número del Caso)

CCG-38-471296

Phone No.: (415) 898-1555

Fax No.: (415) 898-1247

*Elias R. Rott*  
Elias R. Rott, Deputy  
ATTORNEY (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
  
3.  on behalf of (specify):  
 under:  CCP 416.10 (corporation)       CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)       CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)       CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY Peter Fredman (State Bar # 100-997)		To Bar number, and address).	FOR COURT USE ONLY
Brayton Purcell LLP 222 Rush Landing Road, Novato, CA 94948 TELEPHONE NO. (415) 898-1555		FAX NO. (415) 898-1247	
ATTORNEY FOR (Name) DAVID KECK, PLAINTIFF			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS 400 McAllister Street MAILING ADDRESS CITY AND ZIP CODE San Francisco 94102 BRANCH NAME			
CASE NAME: <b>DAVID KECK v BANK OF AMERICA, et al</b>			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	<b>CASE NUMBER</b> <b>TCC-08-471296</b> <b>JUDGE:</b> <b>DEPT.</b>

**FILED**  
San Francisco County Superior Court

JAN 23 2008

GORDON PARK-LI, Clerk  
BY: *Peter Fredman*  
Subduty Clerk

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): FIVE (5)

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 22, 2008

Peter Fredman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 BRAYTON PURCELL LLP  
2 ALAN R. BRAYTON (Bar No. 73685)  
3 PETER B. FREDMAN (Bar No. 189097)  
4 CHARLOTTE E. SCOTT (Bar No. 225581)  
5 222 Rush Landing Road  
Novato, CA 94948-6169  
Telephone: (415) 898-1555  
Facsimile: (415) 898-1247  
Email: pfredman@braytonlaw.com

6 Attorneys for Plaintiff  
DAVID KECK and all persons similarly situated

FILED  
San Francisco County Superior Court

JAN 23 2008

GORDON PARKER, Clerk  
BY: *[Signature]*

CASE MANAGEMENT CONFERENCE SET

JUN 27 2008 - 9:00AM

DEPARTMENT 212

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

13 DAVID KECK, an individual, ) No. C8C-98-471296  
14 Plaintiff, )  
15 vs. )  
16 BANK OF AMERICA, a Delaware )  
corporation; CENTRAL STATES )  
17 INDEMNITY CO. OF OMAHA, a Nebraska )  
Corporation; CSI PROCESSING LLC, a )  
18 Nebraska company; and DOES 1 through 100, )  
19 Defendants. )  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:  
(1) UNFAIR COMPETITION (B&P CODE  
§§ 17200 ET SEQ)  
(2) INVASION OF PRIVACY (PENAL  
CODE §§ 630 ET SEQ)  
(3) CONSUMER LEGAL REMEDIES ACT  
(CIVIL CODE §§ 1750 ET SEQ)  
(4) FINANCIAL ELDER ABUSE (W&I  
CODE §§ 15600 ET SEQ)  
(5) UNJUST ENRICHMENT

21  
22 1. Plaintiff DAVID KECK, an individual, is and was at all relevant times a resident  
23 of the City and County of San Francisco. His date of birth is December 25, 1938.

24 2. Defendant BANK OF AMERICA CORPORATION (BOA) is a Delaware  
25 corporation doing business at all relevant in the City and County of San Francisco.

26 3. Defendant CENTRAL STATES INDEMNITY CO. OF OMAHA (CSI), a  
27 Nebraska corporation, is and was at all relevant times doing business in the City and County of  
28 San Francisco.

---

CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1           4.      Defendant CSI PROCESSING, LLC (CSI), a Nebraska corporation, is and was at  
2 all relevant times doing business in the City and County of San Francisco.

3       5.     The true names and capacities, whether individual, corporate, associate,  
4 governmental, or otherwise, of defendants DOES 1 through 100 are unknown to plaintiff at this  
5 time. Plaintiff therefore sues said defendants by such fictitious names. When the true names  
6 and capacities of said defendants have been ascertained, plaintiff will amend this complaint  
7 accordingly. Plaintiff is informed and believes, and on that basis alleges, that each defendant  
8 designated herein, including each DOE, is responsible, willfully, negligently, or in some other  
9 actionable manner, for the events and happenings, and violations of California law, hereinafter  
10 alleged, and that they caused plaintiff.

11       6. Plaintiffs allege on information and belief that at all times relevant hereto each of  
12 the defendants was the agent, servant, employee, joint-venturer, partner, successor-in-interest,  
13 and/or co-conspirator of each other defendant and was at all said times acting in the full course  
14 and scope of said agency, service, employment, joint venture, concert of action, partnership,  
15 successorship, or conspiracy.

16       7. This Court has jurisdiction because this action alleges violations of California law  
17 suffered by California citizens in California.

18       8.     Venue is proper in this Court because the transaction that is the subject of this  
19 action occurred via telephone call to plaintiff's home in the City and County of San Francisco.

### **FACTUAL ALLEGATIONS**

21        9. Mr. KECK is an elderly gentlemen who has hearing difficulties and other  
22 limitations associated with old age and infirmity.

23       10. As of the Summer of 2007, Mr. KECK was 68 years old and supported himself  
24 solely through his Social security benefits in the amount of approximately \$1200 per month,  
25 which are and were at all relevant times directly deposited into his BOA checking account.

11. As of the Summer of 2007, Mr. KECK was the guarantor of a BOA credit card account (the "subject account") on which he owed approximately \$13,500, which he had borrowed for personal and household expenses. At all relevant times, Mr. KECK was making

regular, timely payments of principal and interest at a marginal APR of approximately 25%.

2       12. Plaintiff alleges that, through its banking relationship with Mr. KECK, BOA  
3 developed and maintained a substantial record of information about him, including demographic  
4 information, for the purpose of profiting from the marketing and sale of goods and services to  
5 him, directly or through partners, including CSI.

6       13. In or about July of 2007, at his home in San Francisco, Mr. KECK began  
7 receiving telemarketing calls from defendants. Defendants made an audio record of one call (the  
8 "subject call"), which is transcribed as follows:

9 TELEMARKETER: David Keck please.  
KECK: Speaking.

10 TELEMARKETER: Mr. Keck good morning sir, my name (incomprehensible)  
11 sir. I'm calling on behalf of Bank of America regarding  
12 your Bank of America business credit card sir that you have  
13 with us. Now Mr. Keck I just want to offer a new optional  
service here today, it's called the business card security.  
Now if -

13 KECK: Now sir—  
14 TELEMARKETER: Someone called me about that yesterday.  
15 —Okay, well sir just want to get the materials out to you  
today sir for 30 days to review in the privacy of your own  
business. Is that okay?

KECK: Yes.

17 TELEMARKETER: Great sir, now in order to get that out to you today, Mr.  
18 Keck, I do have to start the enrollment process today, sir, but  
you do have 30 days in order to make that decision. Is that  
okay?

KECK: Yes.

20 TELEMARKETER: Great. Now to complete your enrollment sir, with your  
21 permission, for quality assurance purposes, I'd like to tape  
record the confirmation of your coverage and enrollment, is  
that okay?

KECK: Yes.

23 TELEMARKETER: Thank you... (incomprehensible) ...I am now taping your  
24 enrollment. I show your name as David Keck. Mr. Keck I  
show you mailing address as 452 Duboce Avenue,  
Apartment number 210, is that correct?

KECK: Yes.

**TELEMARKETER:** Thank you. I'd also like to confirm I'm speaking with the guarantor of a business credit card with the Bank of America, is that correct?

KECK: Pardon me?

1                   TELEMARKETER: I said I would also like to confirm I'm speaking with a  
 2                   guarantor of the business credit card with the Bank of  
 3                   America, is that correct?  
 4                   KECK: Yes, I have a - I have a credit card.

5                   TELEMARKETER: Are you the guarantor sir on that credit Bank of America  
 6                   business credit card?  
 7                   KECK: Yes.

8                   TELEMARKETER: Okay, thank you. Now to verify approval (sic) activate this  
 9                   feature for you, you understand this (sic) on a monthly fee of  
 10                  eighty five cents for one hundred dollars a month, your  
 11                  outstanding bill (sic) will be billed to your Bank of America  
 12                  business card account, I need to verify your city of birth sir.  
 13                  What city were you born in Mr. Keck?

14                  KECK: San Diego.  
 15                  TELEMARKETER: Okay..... Now, Mr. Keck I will process your enrollment....

16                  14. As a result of the subject call, starting on or about August 13, 2007, defendants  
 17                  began charging the subject account a monthly sum in payment for Mr. KECK's alleged purchase  
 18                  via the subject call of a debt protection insurance product and/or service designed to temporarily  
 19                  pay his minimum monthly payment due on the subject account under certain conditions, such as,  
 20                  for example, disability or involuntary unemployment. Plaintiff alleges on information and belief  
 21                  that Mr. KECK's status as a single, unemployed, senior citizen on Social Security rendered the  
 22                  potential benefits of said product and/or service of little, if any, value to him.

23                  15. As a result of the subject call, defendants charged, and Mr. KECK paid, the  
 24                  following amounts: \$111.74 on or about August 13, 2007; \$112.50 on or about September 13,  
 25                  2007; and \$110.34 on or about October 12, 2007. As he was carrying a balance, Mr. KECK was  
 26                  also charged and paid, and continues to pay, interest on these amounts.

27                  16. On or shortly after October 12, 2007, Mr. KECK first noticed the unauthorized  
 28                  charges and, without understanding what they were, began making repeated requests that  
 29                  defendants cure. His efforts were hampered by each defendant's practice of referring him to the  
 30                  other defendant as the party responsible for the charge. When Mr. KECK attempted to resolve  
 31                  the situation through BOA, he was told that he would have to "contact the vendor". CSI, in turn,  
 32                  represented that the charges constitute BOA fees, which, on information and belief, is also the  
 33                  current position of BOA.

1       17. On or about November 12, 2007, defendants sent Mr. KECK a letter which  
 2 provided access to the audio recording of the subject call and referenced said recording as  
 3 "confirmation of his enrollment". The letter was on BOA letterhead but signed by CSI.

4       18. Plaintiff alleges that the defendants conduct of the subject call and other similar  
 5 calls were undertaken pursuant to standardized sales scripts and procedures, based on uniform  
 6 telemarketer training programs, designed and propagated by defendants in order to generate sales  
 7 of said debt protection good/service through acts and practices that constitute deceptive and  
 8 abusive telemarketing.

9       19. Title 15, Chapter 87 of the United States Code prohibits such deceptive and  
 10 abusive telemarketing acts and practices. Defendants aforementioned telemarketing acts and  
 11 practices, as exhibited in the subject call, violate this Chapter, including, the Chapter's

12       "[prohibition against any] pattern of unsolicited telephone calls which the reasonable  
 13 consumer would consider coercive or abusive of such consumer's right to privacy"  
 14 15 U.S.C.A. § 6102(a)(3)(A)

15       "[and] requirement that any person engaged in telemarketing for the sale of goods or  
 16 services shall promptly and clearly disclose to the person receiving the call that the  
 purpose of the call is to sell goods or services and make such other disclosures ...  
 including the nature and price of the goods and services"

17 15 U.S.C.A. § 6102(a)(3)(C)

18       20. Plaintiff denies that he authorized any relevant charges to his account in  
 19 connection with the subject call or otherwise, and alleges that the sales scripts and techniques  
 20 employed by defendants, as exhibited in the subject call, are so inherently deceptive, abusive,  
 21 and predatory that they cannot result in valid authorization of charges against customer credit  
 22 accounts.

23       21. Plaintiff alleges that he and persons similarly situated were targeted by defendants  
 24 for telephone solicitations, including the subject call, based on his old age, and that such  
 25 targeting occurred pursuant to a common pattern, practice, and scheme by defendants.

26       22. Plaintiff alleges that he and persons similarly situated were targeted for repeated  
 27 solicitations of the same offer based on his old age and indicia of related infirmity adduced in  
 28 prior solicitations, and that such targeting was pursuant to a common pattern, practice, and

1 scheme by defendants.

2       23. Plaintiff alleges on information and belief that defendants are intentionally obtuse  
3 regarding the specific nature and particular supplier of said debt protection insurance product  
4 and/or service; that they operate in this manner with the intent and effect of obfuscating potential  
5 customer privacy and insurance regulation issues; and that they operate in this manner with the  
6 intent and effect of profiting from impeding and delaying customer investigations and  
7 cancellations of said charges.

## **CLASS ALLEGATIONS**

9       24. Plaintiffs bring this action on behalf of himself and all other persons similarly  
10 situated pursuant to the provisions of California Code of Civil Procedure sections 382 and 384  
11 and Civil Code section 1781.

12        25. Specifically, plaintiff brings this action on behalf of the Class of all California  
13 resident BOA customers who were charged and paid for debt protection product/service based  
14 on telephone solicitations by defendants, including, but not limited to, the sub-class of such  
15 persons who were senior citizens at the time of the alleged transaction. Excluded from these  
16 Classes are defendants, defendants' predecessors, affiliates, officers, directors, and employees,  
17 and all judges and justices assigned to hear any aspect of this litigation.

18       26. The number of similarly situated plaintiffs favors utilization of the class action  
19 mechanism in this case. Each proposed Class is believed to be composed of tens of thousands of  
20 persons. Joinder of them in one action would be impractical. The simultaneous disposition of  
21 all their claims through a class action will benefit both the parties and the Courts in terms of  
22 judicial economy. It will also serve the interests of justice by avoiding the potential for  
23 inconsistent adjudication of the predominating questions of law.

24        27. The identities of all the class members and the amount and periods of the charges  
25 involved are readily and precisely ascertainable through defendants' records.

26        28. Common issues of fact and law predominate and a well defined community of  
27 interest therein exists among the class members.

28 29. Plaintiff is asserting claims that are typical of the claims of the Classes he seeks to

1 represent and is an adequate representatives of each Class because his interests are coincident  
2 with the interests of the Class members. Plaintiff can and will fairly and adequately represent  
3 and protect the interests of the Class. Plaintiff has retained counsel who are competent and  
4 experienced in the prosecution of class litigation.

5       30.     A class action is superior to other available means for the fair and efficient  
6 adjudication of these claims. Because of the size of the individual class members' claims, and  
7 the relative economic positions of the parties, few, if any, class members could afford to seek  
8 legal redress for the wrongs complained of herein. Absent a class action, the class members will  
9 continue to suffer losses, the violations of law described herein will continue without remedy,  
10 and defendants will be permitted to retain the illicit profits of their illegal conduct.

**1ST CAUSE OF ACTION**

UNFAIR COMPETITION LAW (BUS. & PROF. CODE §§ 17200-17500 ET SEQ.)

13        31.     California Business & Professions Code §§ 17200 *et seq* (the Unfair Competition  
14 Law - "UCL") defines unfair competition to include any unlawful, unfair, or fraudulent business  
15 act or practice as well as any unfair, deceptive, untrue or misleading advertising as defined in  
16 Business & Professions Code §§ 17500.

17 32. Plaintiff alleges that defendants' aforementioned telemarketing acts and practices  
18 violate the UCL.

19 33. Plaintiff and the Class have suffered injury in fact and lost money as a result

34 Defendants' wrongful conduct impacts the public interest because, on information  
and belief, it is a pattern of illegal and predatory conduct that has been repeated on thousands of  
occasions and continues to this day.

23       35 Plaintiff, for himself and on behalf of others similarly situated, seeks to enjoin  
24 defendants' conduct and obtain restitution of all funds obtained by defendants by reason of and  
25 through the use of these practices.

36. Plaintiff is entitled to an award of attorneys' fees, costs, and expenses pursuant to  
Code Civil Procedure section 1021.5.

28 WHEREFORE, plaintiff prays for judgment and relief as set forth below

## **2ND CAUSE OF ACTION**

## **INVASION OF PRIVACY (PENAL CODE §§ 630 ET SEQ)**

3 37. Paragraphs 1 through 30 are incorporated by reference as if fully set forth herein.

4       38. The "Privacy Act is a coherent statutory scheme [that] protects against  
5 intentional, nonconsensual recording of telephone conversations regardless of the content of the  
6 conversation." *Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 776; Penal Code § 632.

7       39. Defendants violated and continue to violate the Privacy Act by engaging in a  
8 practice of covertly recording their telemarketing calls without first notifying or obtaining  
9 consent of the party being solicited, and making intentionally misleading statements to the  
10 contrary, as set forth above in the transcript above.

11       40. Plaintiff alleges on behalf of himself and persons similarly situated that the  
12 practice of recording these telemarketing calls without seeking the consent of the recipient is  
13 standardized and common to all such calls.

14       41. Pursuant to Penal Code section 637.2 plaintiff and all persons similarly situated  
15 are entitled to statutory damages of \$5000 per violation and defendants must be enjoined and  
16 restrained from engaging in such conduct.

17 WHEREFORE, plaintiff prays for judgment and relief as set forth below.

**3RD CAUSE OF ACTION**

## **CONSUMER LEGAL REMEDIES ACT (CIVIL CODE §§ 1750 ET SEQ)**

20 42. Paragraphs 1 through 41 are incorporated by reference as if fully set forth herein.

21       43. Plaintiff alleges that the aforementioned credit card debt protection insurance  
22 product and/or service constitutes a good and/or service covered by California's Consumer Legal  
23 Remedies Act (the "CLRA" – Cal. Civil Code §§1750 et seq.).

24       44. Plaintiff alleges that defendants' aforementioned conduct constitutes past and  
25 ongoing violations of the following sub-sections of the CLRA:

1 association with, or certification by, another.

- 2 c. Civil Code § 1770(a)(5). Representing that goods or services have  
3 sponsorship, approval, characteristics, ingredients, uses, benefits, or  
4 quantities which they do not have or that a person has a sponsorship,  
5 approval, status, affiliation, or connection which he or she does not have.
- 6 d. Civil Code § 1770(a)(7). Representing that goods or services are of a  
7 particular standard, quality, or grade, or that goods are of a particular style  
8 or model, if they are of another.
- 9 e. Civil Code § 1770(a)(13). Making false or misleading statements of fact  
10 concerning reasons for, existence of, or amounts of price reductions.
- 11 f. Civil Code § 1770(a)(14). Representing that a transaction confers or  
12 involves rights, remedies, or obligations which it does not have or involve,  
13 or which are prohibited by law.
- 14 g. Civil Code § 1770(a)(18). Inserting an unconscionable provision in the  
15 contract.

16 45. Plaintiff has provided defendants with notice of its violations and requested a  
17 cure. Defendants have failed to remedy its violations.

18 46. In doing the things alleged above, defendants have violated and, unless enjoined,  
19 will continue to violate the CLRA as alleged in the notice.

20 47. As a proximate result of the CLRA violations, plaintiff and the class have been  
21 damaged in an amount to be proven at trial.

22 48. Plaintiff is entitled to an award of attorneys' fees, costs and expenses pursuant to  
23 Civil Code §1780(d).

24 49. Defendants' conduct was intentional, outrageous, malicious, fraudulent,  
25 oppressive, and despicable; was carried out with a willful and conscious disregard of the rights  
26 plaintiff's and the plaintiff class; and was carried out, authorized, and ratified by officers,  
27 directors, and managing agents of defendants, thus entitling plaintiff and the plaintiff class to  
28 punitive damages to punish and make an example of defendants and dissuade them and others

1 from engaging in such practices in the future.

2 WHEREFORE, plaintiff prays for judgment and relief as set forth below.

3 **4TH CAUSE OF ACTION**

4 **FINANCIAL ELDER ABUSE (WELF. & INST. CODE §§ 15600 ET SEQ)**

5 50. Paragraphs 1 through 30 are incorporated by reference as if fully set forth herein

6 51. Plaintiff is and was at the time of the subject call an "elder" as that term is

7 defined in the Elder Abuse and Dependent Adult Civil Protection Act, commencing at California

8 Welfare & Institutions Code section 15600 (the "Elder Abuse Act").

9 52. Plaintiff alleges on behalf of similarly situated senior citizens that, in doing the  
10 things alleged herein, defendants wrongfully appropriated and retained their property with the  
11 intent to defraud, and/or assisted in doing the same, and thereby committed financial elder abuse,  
12 as that term is defined in section 15610.30 of the Elder Abuse Act and related case law.

13 53. Defendants' conduct was intentional, outrageous, malicious, fraudulent,  
14 oppressive, and despicable; was carried out with a willful and conscious disregard of the rights  
15 plaintiff s and the plaintiff class; and was carried out, authorized, and ratified by officers,  
16 directors, and managing agents of defendants, thus entitling plaintiff and the plaintiff class to  
17 punitive damages to punish and make an example of defendants and dissuade them and others  
18 from engaging in such practices in the future.

19 54. Plaintiff is entitled to attorneys fees and costs pursuant to section 15657.5 of the  
20 Elder Abuse Act.

21 WHEREFORE, plaintiff prays for judgment as set forth below.

22 **5TH CAUSE OF ACTION**

23 **UNJUST ENRICHMENT**

24 55. Paragraphs 1 through 30 are incorporated by reference herein.

25 56. Defendants unjustly received and retained benefits at the expense of plaintiff and  
26 persons similarly situated, who are, therefore, entitled to restitution.

27 57. Defendants' conduct was intentional, outrageous, malicious, fraudulent,  
28 oppressive, and despicable; was carried out with a willful and conscious disregard of the rights

1 plaintiff s and the plaintiff class; and was carried out, authorized, and ratified by officers,  
2 directors, and managing agents of defendants, thus entitling plaintiff and the plaintiff class to  
3 punitive damages to punish and make an example of defendants and dissuade them and others  
4 from engaging in such practices in the future.

5 WHEREFORE, plaintiff prays for judgment and relief as set forth below.

6 **PRAYER FOR RELIEF**

7 Plaintiff prays for relief and a judgment against defendants, as follows:

8 A. An order certifying the Plaintiff Class, appointing plaintiff DAVID KECK as  
9 representative of the Class, and appointing the law firm representing plaintiff as counsel for the  
10 Class;

11 B. Restitution of all monies acquired by defendants during the last four years as a  
12 result of its unlawful practices described above;

13 C. Imposition of a constructive trust upon all assets defendants have acquired from  
14 the Class as a result of their unlawful practices described above (Civil Code § 2224);

15 D. Economic damages according to proof;

16 E. Statutory damages of \$1000 under the CLRA (Civil Code § 1780(a)(1)) and  
17 \$5000 per privacy violation (Penal Code § 637.2);

18 F. The issuance of injunctive orders enjoining defendants from engaging in the  
19 unlawful practices described above.

20 G. Payment of costs of suit herein incurred;

21 H. Pre- and post-judgment interest on amounts awarded;

22 I. Attorneys' fees, costs and expenses pursuant to Code of Civil Procedure § 1021.5,  
23 the CLRA, the Elder Abuse Act, and any other applicable authority; and

24 J. For such other and further relief as the Court may deem proper.

25 ///

26 ///

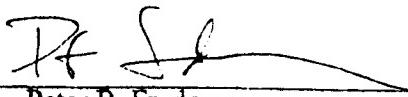
27 ///

28 ///

1  
2 Dated: January 22, 2008  
3

BRAYTON PURCELL LLP

4 By:  
5



Peter B. Fredman  
Attorneys for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial by jury on all claims so triable.  
10

11 Dated: January 22, 2008  
12

BRAYTON PURCELL LLP

13 By:  
14



Peter B. Fredman  
Attorneys for Plaintiff

## NOTICE TO PLAINTIFF

A Case Management Conference is set for:

**DATE: JUN-27-2008**

**TIME: 9:00AM**

**PLACE: Department 212  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

## ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.  
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.6, 6.C and 10.D re stipulation to commissioners acting as temporary judges

To Peter  
Friedman

1 BRAYTON PURCELL LLP  
2 ALAN R. BRAYTON (Bar No. 73685)  
3 PETER B. FREDMAN (Bar No. 189097)  
4 CHARLOTTE E. SCOTT (Bar No. 225581)  
5 222 Rush Landing Road  
Novato, CA 94948-6169  
Telephone: (415) 898-1555  
Facsimile: (415) 898-1247  
Email: pfredman@braytonlaw.com

ENDORSED  
FILED  
San Francisco County Superior Court

6 Attorneys for Plaintiff  
DAVID KECK and all persons similarly situated

JAN 24 2008

GORDON PARK-LI, Clerk  
BY: MICHAEL RAYRAY  
Danish Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

11 DAVID KECK, an individual,

No. 471296

12 Plaintiff,

13 vs.

14 BANK OF AMERICA, a Delaware  
corporation; CENTRAL STATES  
15 INDEMNITY CO. OF OMAHA, a Nebraska  
Corporation; CSI PROCESSING LLC, a  
16 Nebraska company; and DOES 1 through 100,

DECLARATION OF PLAINTIFF DAVID  
KECK REGARDING PROPER VENUE  
PURSUANT TO CIVIL CODE SECTION  
1780(C)

17 Defendants.

RECEIVED BY FAX

18  
19 I, Plaintiff DAVID KECK, declare under the penalty of perjury of the Laws of the State  
20 of California that I do my banking at Bank of America branch locations in San Francisco,  
21 California and that the telephone solicitation that is the subject of this lawsuit was received by  
22 me on my home telephone at my home in San Francisco, California.

23  
24 DATE: January 22, 2008

  
DAVID KECK

25  
26  
27  
28  
DECLARATION OF PLAINTIFF DAVID KECK  
REGARDING PROPER VENUE PURSUANT TO CIVIL CODE SECTION 1780(C)

Page 1 of 1

AMENDED SUMMONS  
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

BANK OF AMERICA, a Delaware corporation; CENTRAL STATES  
INDEMNITY CO. OF OMAHA, a Nebraska Corporation; CSI  
PROCESSING LLC, a Nebraska company; and DOES 1 through 100,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DAVID KECK, an individual,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procedan su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/seithelp/espanol](http://www.courtinfo.ca.gov/seithelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/seithelp/espanol](http://www.courtinfo.ca.gov/seithelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN  
FRANCISCO

400 McAllister Street, San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Peter Fredman (Bar # 189097)

CASE NUMBER: CGC 38-471296  
(Número del Caso):

Brayton Purcell LLP

222 Rush Landing Road, Novato, CA 94948

Phone No.: (415) 898-1555

DATE: JAN 29 2008

Fax No.: (415) 898-1247

(Fecha)

CORONATION PARK LI

Clerk, by VESI F Y RAMIREZ, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):

3.  on behalf of (specify): Bank of America, a Delaware corporation

under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)

4.  by personal delivery on (date):

2/8/08 6:30 PM

Page 1 of 1

FILED  
Superior Court of California  
County of San Francisco

JAN 31 2008

GORDON PARKER, Clerk  
BY \_\_\_\_\_ Deputy Clerk

1 BRAYTON PURCELL LLP  
 2 ALAN R. BRAYTON (Bar No. 73685)  
 3 PETER B. FREDMAN (Bar No. 189097)  
 4 CHARLOTTE E. SCOTT (Bar No. 225581)  
 5 222 Rush Landing Road  
 Novato, CA 94948-6169  
 Telephone: (415) 898-1555  
 Facsimile: (415) 898-1247  
 Email: pfredman@braytonlaw.com

6 Attorneys for Plaintiff  
 DAVID KECK and all persons similarly situated  
 7  
 8  
 9

10 SUPERIOR COURT OF CALIFORNIA  
 11 COUNTY OF SAN FRANCISCO

12 DAVID KECK, an individual,

13 No. CGC-30-471296

14 Plaintiff,

CLASS ACTION

15 vs.

16 FIRST AMENDED COMPLAINT FOR  
 DAMAGES AND INJUNCTIVE RELIEF  
 FOR:17 BANK OF AMERICA, a Delaware  
 corporation; CENTRAL STATES  
 INDEMNITY CO. OF OMAHA, a Nebraska  
 Corporation; CSI PROCESSING LLC, a  
 Nebraska company, and DOES 1 through 100,

- 18 Defendants.
- (1) UNFAIR COMPETITION (B&P CODE  
 §§ 17200 ET SEQ)
  - (2) INVASION OF PRIVACY (PENAL  
 CODE §§ 630 ET SEQ)
  - (3) CONSUMER LEGAL REMEDIES ACT  
 (CIVIL CODE §§ 1750 ET SEQ)
  - (4) FINANCIAL ELDER ABUSE (W&I  
 CODE §§ 15600 ET SEQ)
  - (5) UNJUST ENRICHMENT

19  
 20 - JURY TRIAL DEMANDED -  
 21  
 22

23 1. Plaintiff DAVID KECK, an individual, is and was at all relevant times a resident  
 24 of the City and County of San Francisco. His date of birth is December 25, 1938.

25 2. Defendant BANK OF AMERICA CORPORATION (BOA) is a Delaware  
 26 corporation doing business at all relevant in the City and County of San Francisco.

27 3. Defendant CENTRAL STATES INDEMNITY CO. OF OMAHA (CSI), a  
 28 Nebraska corporation, is and was at all relevant times doing business in the City and County of  
 San Francisco.

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FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1           4. Defendant CSI PROCESSING, LLC (CSI), a Nebraska corporation, is and was at  
 2 all relevant times doing business in the City and County of San Francisco.

3           5. The true names and capacities, whether individual, corporate, associate,  
 4 governmental, or otherwise, of defendants DOES 1 through 100 are unknown to plaintiff at this  
 5 time. Plaintiff therefore sues said defendants by such fictitious names. When the true names  
 6 and capacities of said defendants have been ascertained, plaintiff will amend this complaint  
 7 accordingly. Plaintiff is informed and believes, and on that basis alleges, that each defendant  
 8 designated herein, including each DOE, is responsible, willfully, negligently, or in some other  
 9 actionable manner, for the events and happenings, and violations of California law, hereinafter  
 10 alleged, and that they caused plaintiff and the plaintiff Classes harm thereby.

11          6. Plaintiffs allege on information and belief that at all times relevant hereto each of  
 12 the defendants was the agent, servant, employee, joint-venturer, partner, successor-in-interest,  
 13 and/or co-conspirator of each other defendant and was at all said times acting in the full course  
 14 and scope of said agency, service, employment, joint venture, concert of action, partnership,  
 15 successorship, or conspiracy.

16          7. This Court has jurisdiction because this action alleges violations of California law  
 17 suffered by California citizens in California.

18          8. Venue is proper in this Court because the transaction that is the subject of this  
 19 action occurred via telephone call to plaintiff's home in the City and County of San Francisco.

#### FACTUAL ALLEGATIONS

20          9. Mr. KECK is an elderly gentlemen who has hearing difficulties and other  
 21 limitations associated with old age and infirmity.

22          10. As of the Summer of 2007, Mr. KECK was 68 years old and supported himself  
 23 solely through his Social security benefits in the amount of approximately \$1200 per month,  
 24 which are and were at all relevant times directly deposited into his BOA checking account.

25          11. As of the Summer of 2007, Mr. KECK was the guarantor of a BOA credit card  
 26 account (the "subject account") on which he owed approximately \$13,500, which he had  
 27 borrowed for personal and household expenses. At all relevant times, Mr. KECK was making

1 regular, timely payments of principal and interest at a marginal APR of approximately 25%.

2       12. Plaintiff alleges that, through its banking relationship with Mr. KECK, BOA  
 3 developed and maintained a substantial record of information about him, including demographic  
 4 information, for the purpose of profiting from the marketing and sale of goods and services to  
 5 him, directly or through partners, including CSI.

6       13. In or about July of 2007, at his home in San Francisco, Mr. KECK began  
 7 receiving telemarketing calls from defendants. Defendants made an audio record of one call (the  
 8 "subject call"), which is transcribed as follows:

9           TELEMARKETER: David Keck please.  
 KECK: Speaking.

10          TELEMARKETER: Mr. Keck good morning sir, my name (incomprehensible)  
 11 sir. I'm calling on behalf of Bank of America regarding  
 12 your Bank of America business credit card sir that you have  
 13 with us. Now Mr. Keck I just want to offer a new optional  
 14 service here today, it's called the business card security.  
 15 Now if-

16          KECK: Someone called me about that yesterday.  
 17 TELEMARKETER: -Okay, well sir just want to get the materials out to you  
 18 today sir for 30 days to review in the privacy of your own  
 19 business. Is that okay?  
 20 KECK: Yes.

21          TELEMARKETER: Great sir, now in order to get that out to you today, Mr.  
 22 Keck, I do have to start the enrollment process today, sir, but  
 23 you do have 30 days in order to make that decision. Is that  
 24 okay?  
 25 KECK: Yes.

26          TELEMARKETER: Great. Now to complete your enrollment sir, with your  
 27 permission, for quality assurance purposes, I'd like to tape  
 28 record the confirmation of your coverage and enrollment, is  
 29 that okay?  
 30 KECK: Yes.

31          TELEMARKETER: Thank you... (incomprehensible) ...I am now taping your  
 32 enrollment. I show your name as David Keck. Mr. Keck I  
 33 show you mailing address as 452 Duboce Avenue,  
 34 Apartment number 210, is that correct?

35          KECK: Yes.  
 36          TELEMARKETER: Thank you. I'd also like to confirm I'm speaking with the  
 37 guarantor of a business credit card with the Bank of  
 38 America, is that correct?  
 39 KECK: Pardon me?

1           TELEMARKETER: I said I would also like to confirm I'm speaking with a  
2           guarantor of the business credit card with the Bank of  
3           America, is that correct?  
4

5           KECK:  
6           TELEMARKETER: Yes, I have a - I have a credit card.  
7           Are you the guarantor sir on that credit Bank of America  
8           business credit card?  
9

10          KECK:  
11

12          TELEMARKETER: Okay, thank you. Now to verify approval (sic) activate this  
13         feature for you, you understand this (sic) on a monthly fee of  
14         eighty five cents for one hundred dollars a month, your  
15         outstanding bill (sic) will be billed to your Bank of America  
16         business card account, I need to verify your city of birth sir.  
17         What city were you born in Mr. Keck?

18          KECK:  
19          TELEMARKETER: San Diego.  
20          Okay..... Now, Mr. Keck I will process your enrollment....  
21

22          14. As a result of the subject call, starting on or about August 13, 2007, defendants  
23         began charging the subject account a monthly sum in payment for Mr. KECK's alleged purchase  
24         via the subject call of a debt protection insurance product and/or service designed to temporarily  
25         pay his minimum monthly payment due on the subject account under certain conditions, such as,  
26         for example, disability or involuntary unemployment. Plaintiff alleges on information and belief  
27         that Mr. KECK's status as a single, unemployed, senior citizen on Social Security rendered the  
28         potential benefits of said product and/or service of little, if any, value to him.

22          15. As a result of the subject call, defendants charged, and Mr. KECK paid, the  
23         following amounts: \$111.74 on or about August 13, 2007; \$112.50 on or about September 13,  
24         2007; and \$110.34 on or about October 12, 2007. As he was carrying a balance, Mr. KECK was  
25         also charged and paid, and continues to pay, interest on these amounts.

22          16. On or shortly after October 12, 2007, Mr. KECK first noticed the unauthorized  
23         charges and, without understanding what they were, began making repeated requests that  
24         defendants cure. His efforts were hampered by each defendant's practice of referring him to the  
25         other defendant as the party responsible for the charge. When Mr. KECK attempted to resolve  
26         the situation through BOA, he was told that he would have to "contact the vendor". CSI, in turn,  
27         represented that the charges constitute BOA fees, which, on information and belief, is also the  
28         current position of BOA.

1       17. On or about November 12, 2007, defendants sent Mr. KECK a letter which  
2 provided access to the audio recording of the subject call and referenced said recording as  
3 "confirmation of his enrollment". The letter was on BOA letterhead but signed by CSI.

4       18. Plaintiff alleges that the defendants conduct of the subject call and other similar  
5 calls were undertaken pursuant to standardized sales scripts and procedures, based on uniform  
6 telemarketer training programs, designed and propagated by defendants in order to generate sales  
7 of said debt protection good/service through acts and practices that constitute deceptive and  
8 abusive telemarketing.

9       19. Title 15, Chapter 87 of the United States Code prohibits such deceptive and  
10 abusive telemarketing acts and practices. Defendants aforementioned telemarketing acts and  
11 practices, as exhibited in the subject call, violate this Chapter, including, the Chapter's

12       "[prohibition against any] pattern of unsolicited telephone calls which the reasonable  
13 consumer would consider coercive or abusive of such consumer's right to privacy"

14       15 U.S.C.A. § 6102(a)(3)(A)

15       "[and] requirement that any person engaged in telemarketing for the sale of goods or  
16 services shall promptly and clearly disclose to the person receiving the call that the  
17 purpose of the call is to sell goods or services and make such other disclosures ...  
18 including the nature and price of the goods and services"

19       15 U.S.C.A. § 6102(a)(3)(C)

20       20. Plaintiff denies that he authorized any relevant charges to his account in  
21 connection with the subject call or otherwise, and alleges that the sales scripts and techniques  
22 employed by defendants, as exhibited in the subject call, are so inherently deceptive, abusive,  
23 and predatory that they cannot result in valid authorization of charges against customer credit  
24 accounts.

25       21. Plaintiff alleges that he and persons similarly situated were targeted by defendants  
26 for telephone solicitations, including the subject call, based on his old age, and that such  
27 targeting occurred pursuant to a common pattern, practice, and scheme by defendants.

28       22. Plaintiff alleges that he and persons similarly situated were targeted for repeated  
29 solicitations of the same offer based on his old age and indicia of related infirmity adduced in  
30 prior solicitations, and that such targeting was pursuant to a common pattern, practice, and

1 scheme by defendants.

2       23. Plaintiff alleges on information and belief that defendants are intentionally obtuse  
 3 regarding the specific nature and particular supplier of said debt protection insurance product  
 4 and/or service; that they operate in this manner with the intent and effect of obscuring potential  
 5 customer privacy and insurance regulation issues; and that they operate in this manner with the  
 6 intent and effect of profiting from impeding and delaying customer investigations and  
 7 cancellations of said charges.

#### CLASS ALLEGATIONS

8       24. Plaintiffs bring this action on behalf of himself and all other persons similarly  
 9 situated pursuant to the provisions of California Code of Civil Procedure sections 382 and 384  
 10 and Civil Code section 1781.

11       25. Specifically, plaintiff brings this action on behalf of the Class of all California  
 12 resident BOA customers who were charged and paid for debt protection product/service based  
 13 on telephone solicitations by defendants, including, but not limited to, the sub-class of such  
 14 persons who were senior citizens at the time of the alleged transaction. Excluded from these  
 15 Classes are defendants, defendants' predecessors, affiliates, officers, directors, and employees,  
 16 and all judges and justices assigned to hear any aspect of this litigation.

17       26. The number of similarly situated plaintiffs favors utilization of the class action  
 18 mechanism in this case. Each proposed Class is believed to be composed of tens of thousands of  
 19 persons. Joinder of them in one action would be impractical. The simultaneous disposition of  
 20 all their claims through a class action will benefit both the parties and the Courts in terms of  
 21 judicial economy. It will also serve the interests of justice by avoiding the potential for  
 22 inconsistent adjudication of the predominating questions of law.

23       27. The identities of all the class members and the amount and periods of the charges  
 24 involved are readily and precisely ascertainable through defendants' records.

25       28. Common issues of fact and law predominate and a well defined community of  
 26 interest therein exists among the class members.

27       29. Plaintiff is asserting claims that are typical of the claims of the Classes he seeks to

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FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1 represent and is an adequate representatives of each Class because his interests are coincident  
 2 with the interests of the Class members. Plaintiff can and will fairly and adequately represent  
 3 and protect the interests of the Class. Plaintiff has retained counsel who are competent and  
 4 experienced in the prosecution of class litigation.

5       30. A class action is superior to other available means for the fair and efficient  
 6 adjudication of these claims. Because of the size of the individual class members' claims, and  
 7 the relative economic positions of the parties, few, if any, class members could afford to seek  
 8 legal redress for the wrongs complained of herein. Absent a class action, the class members will  
 9 continue to suffer losses, the violations of law described herein will continue without remedy,  
 10 and defendants will be permitted to retain the illicit profits of their illegal conduct.

#### 1ST CAUSE OF ACTION

##### UNFAIR COMPETITION LAW (BUS. & PROF. CODE §§ 17200-17500 ET SEQ)

12       31. California Business & Professions Code §§ 17200 et seq (the Unfair Competition  
 13 Law - "UCL") defines unfair competition to include any unlawful, unfair, or fraudulent business  
 14 act or practice as well as any unfair, deceptive, untrue or misleading advertising as defined in  
 15 Business & Professions Code §§ 17500.

16       32. Plaintiff alleges that defendants' aforementioned telemarketing acts and practices  
 17 violate the UCL.

18       33. Plaintiff and the Class have suffered injury in fact and lost money as a result.  
 19       34. Defendants' wrongful conduct impacts the public interest because, on information  
 20 and belief, it is a pattern of illegal and predatory conduct that has been repeated on thousands of  
 21 occasions and continues to this day.

22       35. Plaintiff, for himself and on behalf of others similarly situated, seeks to enjoin  
 23 defendants' conduct and obtain restitution of all funds obtained by defendants by reason of and  
 24 through the use of these practices.

25       36. Plaintiff is entitled to an award of attorneys' fees, costs, and expenses pursuant to  
 26 Code Civil Procedure section 1021.5.

27       WHEREFORE, plaintiff prays for judgment and relief as set forth below.

28       FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

2ND CAUSE OF ACTION

INVASION OF PRIVACY (PENAL CODE §§ 630 ET SEQ)

37. Paragraphs 1 through 30 are incorporated by reference as if fully set forth herein.

38. The "Privacy Act is a coherent statutory scheme [that] protects against

5 intentional, nonconsensual recording of telephone conversations regardless of the content of the  
6 conversation." *Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 776; Penal Code § 632.

7 39. Defendants violated and continue to violate the Privacy Act by engaging in a  
8 practice of covertly recording their telemarketing calls without first notifying or obtaining  
9 consent of the party being solicited, and making intentionally misleading statements to the  
10 contrary, as set forth above in the transcript above.

11 40. Plaintiff alleges on behalf of himself and persons similarly situated that the  
12 practice of recording these telemarketing calls without seeking the consent of the recipient is  
13 standardized and common to all such calls.

14 41. Pursuant to Penal Code section 637.2 plaintiff and all persons similarly situated  
15 are entitled to statutory damages of \$5000 per violation and defendants must be enjoined and  
16 restrained from engaging in such conduct.

17 WHEREFORE, plaintiff prays for judgment and relief as set forth below.

3RD CAUSE OF ACTION

CONSUMER LEGAL REMEDIES ACT (CIVIL CODE §§ 1750 ET SEQ)

19 42. Paragraphs 1 through 41 are incorporated by reference as if fully set forth herein.

20 43. Plaintiff alleges that the aforementioned credit card debt protection insurance

21 product and/or service constitutes a good and/or service covered by California's Consumer Legal  
22 Remedies Act (the "CLRA" – Cal. Civil Code §§1750 et seq).

23 44. Plaintiff alleges that defendants' aforementioned conduct constitutes past and

24 ongoing violations of the following sub-sections of the CLRA:

25 a. Civil Code § 1770(a)(2). Misrepresenting the source, sponsorship,  
26 approval, or certification of goods or services.

27 b. Civil Code § 1770(a)(3). Misrepresenting the affiliation, connection, or

28 FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1 association with, or certification by, another.

- 2 c. Civil Code § 1770(a)(5). Representing that goods or services have  
3 sponsorship, approval, characteristics, ingredients, uses, benefits, or  
4 quantities which they do not have or that a person has a sponsorship,  
5 approval, status, affiliation, or connection which he or she does not have.  
6 d. Civil Code § 1770(a)(7). Representing that goods or services are of a  
7 particular standard, quality, or grade, or that goods are of a particular style  
8 or model, if they are of another.  
9 e. Civil Code § 1770(a)(13). Making false or misleading statements of fact  
10 concerning reasons for, existence of, or amounts of price reductions.  
11 f. Civil Code § 1770(a)(14). Representing that a transaction confers or  
12 involves rights, remedies, or obligations which it does not have or involve,  
13 or which are prohibited by law.  
14 g. Civil Code § 1770(a)(18). Inserting an unconscionable provision in the  
15 contract.

16 45. Plaintiff has provided defendants with notice of its violations and requested a  
17 cure. Defendants have failed to remedy its violations.

18 46. In doing the things alleged above, defendants have violated and, unless enjoined,  
19 will continue to violate the CLRA as alleged in the notice.

20 47. As a proximate result of the CLRA violations, plaintiff and the class have been  
21 damaged in an amount to be proven at trial.

22 48. Plaintiff is entitled to an award of attorneys' fees, costs and expenses pursuant to  
23 Civil Code § 1780(d).

24 49. Defendants' conduct was intentional, outrageous, malicious, fraudulent,  
25 oppressive, and despicable; was carried out with a willful and conscious disregard of the rights  
26 plaintiff's and the plaintiff class; and was carried out, authorized, and ratified by officers,  
27 directors, and managing agents of defendants, thus entitling plaintiff and the plaintiff class to  
28 punitive damages to punish and make an example of defendants and dissuade them and others

1 from engaging in such practices in the future.

2 WHEREFORE, plaintiff prays for judgment and relief as set forth below.

3 4TH CAUSE OF ACTION

4 **FINANCIAL ELDER ABUSE (WELF. & INST. CODE §§ 15600 ET SEQ)**

5 50. Paragraphs 1 through 30 are incorporated by reference as if fully set forth herein

6 51. Plaintiff is and was at the time of the subject call an "elder" as that term is

7 defined in the Elder Abuse and Dependent Adult Civil Protection Act, commencing at California  
8 Welfare & Institutions Code section 15600 (the "Elder Abuse Act").

9 52. Plaintiff alleges on behalf of similarly situated senior citizens that, in doing the  
10 things alleged herein, defendants wrongfully appropriated and retained their property with the  
11 intent to defraud, and/or assisted in doing the same, and thereby committed financial elder abuse,  
12 as that term is defined in section 15610.30 of the Elder Abuse Act and related case law.

13 53. Defendants' conduct was intentional, outrageous, malicious, fraudulent,  
14 oppressive, and despicable; was carried out with a willful and conscious disregard of the rights  
15 plaintiffs and the plaintiff class; and was carried out, authorized, and ratified by officers,  
16 directors, and managing agents of defendants, thus entitling plaintiff and the plaintiff class to  
17 punitive damages to punish and make an example of defendants and dissuade them and others  
18 from engaging in such practices in the future.

19 54. Plaintiff is entitled to attorneys fees and costs pursuant to section 15657.5 of the  
20 Elder Abuse Act.

21 WHEREFORE, plaintiff prays for judgment as set forth below.

22 5TH CAUSE OF ACTION

23 **UNJUST ENRICHMENT**

24 55. Paragraphs 1 through 30 are incorporated by reference herein.

25 56. Defendants unjustly received and retained benefits at the expense of plaintiff and  
26 persons similarly situated, who are, therefore, entitled to restitution.

27 57. Defendants' conduct was intentional, outrageous, malicious, fraudulent,  
28 oppressive, and despicable; was carried out with a willful and conscious disregard of the rights

1 plaintiff s and the plaintiff class; and was carried out, authorized, and ratified by officers,  
2 directors, and managing agents of defendants, thus entitling plaintiff and the plaintiff class to  
3 punitive damages to punish and make an example of defendants and dissuade them and others  
4 from engaging in such practices in the future.

5 WHEREFORE, plaintiff prays for judgment and relief as set forth below.

6 **PRAYER FOR RELIEF**

7 Plaintiff prays for relief and a judgment against defendants, as follows:

8 A. An order certifying the Plaintiff Class, appointing plaintiff DAVID KECK as  
9 representative of the Class, and appointing the law firm representing plaintiff as counsel for the  
10 Class;

11 B. Restitution of all monies acquired by defendants during the last four years as a  
12 result of its unlawful practices described above;

13 C. Imposition of a constructive trust upon all assets defendants have acquired from  
14 the Class as a result of their unlawful practices described above (Civil Code § 2224);

15 D. Economic damages according to proof;

16 E. Statutory damages of \$1000 under the CLRA (Civil Code § 1780(a)(1)) and  
17 \$5000 per privacy violation (Penal Code § 637.2);

18 F. Punitive damages according to proof;

19 G. The issuance of injunctive orders enjoining defendants from engaging in the  
20 unlawful practices described above.

21 H. Payment of costs of suit herein incurred;

22 I. Pre- and post-judgment interest on amounts awarded;

23 J. Attorneys' fees, costs and expenses pursuant to Code of Civil Procedure § 1021.5,  
24 the CLRA, the Elder Abuse Act, and any other applicable authority; and

25 K. For such other and further relief as the Court may deem proper.

26 ///

27 ///

28 ///

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1  
2 Dated: January 30, 2008

3 BRAYTON PURCELL LLP

4 By: 

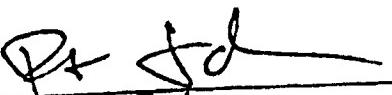
5 Peter B. Fredman  
6 Attorneys for Plaintiff

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a trial by jury on all claims so triable.  
9

10 Dated: January 30, 2008

11 BRAYTON PURCELL LLP

12 By: 

13 Peter B. Fredman  
14 Attorneys for Plaintiff

**Superior Court of California, County of San Francisco**

Case Number: CGC-08-471296

Title: DAVID KECK VS. BANK OF AMERICA, A DELAWARE CORPORATION et al  
Cause of Action: BUSINESS TORT

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Register of Actions Parties Attorneys Calendar Payments Documents

**Register of Actions**

Date Range: First Date Jan-23-2008 Last Date Feb-29-2008 (Dates must be entered as MMM-DD-YYYY)

Descending Date Sequence

ALL FILING TYPES

Submit

Date	Proceedings	Document	Fee
JAN-31-2008	1ST AMENDED COMPLAINT FILED BY PLAINTIFF KECK, DAVID AS TO DEFENDANT BANK OF AMERICA, A DELAWARE CORPORATION CENTRAL STATES INDEMNITY CO. OF OMAHA A NEBRASKA CORPORATION CSI PROCESSING LLC, A NEBRASKA CORPORATION DOES 1 THRU 100	<a href="#">View</a>	
JAN-29-2008	SUMMONS ISSUED (FIRST AMENDED COMPLAINT) TO PLAINTIFF KECK, DAVID		
JAN-24-2008	DECLARATION OF PLTF DAVID KECK REGARDING PROPER VENUE PURSUANT TO CIVL CODE SECTION 1780(C) FILED BY PLAINTIFF KECK, DAVID		
JAN-23-2008	NOTICE TO PLAINTIFF	<a href="#">View</a>	
JAN-23-2008	BUSINESS TORT, COMPLAINT FILED BY PLAINTIFF KECK, DAVID AS TO DEFENDANT BANK OF AMERICA, A DELAWARE CORPORATION CENTRAL STATES INDEMNITY CO. OF OMAHA A NEBRASKA CORPORATION CSI PROCESSING LLC, A NEBRASKA CORPORATION DOES 1 THRU 100 SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR JUN-27-2008 PROOF OF SERVICE DUE ON MAR-24-2008 CASE MANAGEMENT STATEMENT DUE ON JUN-12-2008 COMPLEX LITIGATION ASSIGNMENT REQUESTED BY FILING PARTIES; FEE INCLUDED IN FILING FEE	<a href="#">View</a>	885.00

## **PROOF OF SERVICE**

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of San Francisco, California; my business address is Severson & Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On the date below I served a copy, with all exhibits, of the following document(s):

**NOTICE TO ADVERSE PARTY OF REMOVAL TO FEDERAL COURT**

on all interested parties in said case addressed as follows:

Alan R. Brayton, Esq.  
Peter B. Fredman, Esq.  
Charlotte E. Schott, Esq.  
Brayton Purcell, LLP  
222 Rush Landing Road  
Novato, CA 94948-6169

*Attorneys for Plaintiff  
David Keck*

**12** X (BY MAIL) By placing the envelope for collection and mailing following our ordinary  
business practices. I am readily familiar with the firm's practice of collecting and processing  
**13** correspondence for mailing. On the same day that correspondence is placed for collection and  
mailing, it is deposited in the ordinary course of business with the United States Postal Service in  
**14** San Francisco, California in sealed envelopes with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed in San Francisco, California, on February 29, 2008.

Veronica Appleberry